

Strategy Research Project

Malaysia's Great Power Balance and the South China Sea Disputes

by

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Abstract

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Malaysia is one of several Southeast Asian countries that claim a portion of the South China Sea that is also claimed by China. However, Malaysia has chosen to downplay this dispute in the interest of furthering positive relations with China, in particular economically. In recent years Malaysia has also improved its political and military relations with the U.S.; the two countries have long enjoyed strong economic ties. Malaysian policy thus can be viewed as seeking a balance between the two great powers – improved economic ties with China lessen Malaysian economic dependence on the U.S., while stronger political and military ties with the U.S. help hedge against Chinese dominance in Southeast Asia. Malaysia will continue to promote strong bilateral relationships with both countries, promote their ties to ASEAN, and continue to promote resolution of the South China Sea disputes on a multilateral basis through ASEAN.

Malaysia's Great Power Balance and the South China Sea Disputes

The South China Sea has in recent years become a hot spot in international conflict stemming from overlapping claims on the islands in this vast area among China, Vietnam, Malaysia, Brunei, the Philippines, and Taiwan. China's assertiveness towards Vietnam and the Philippines has been especially noteworthy over the last two years. While the disputes are long-standing problems among the claimants, some of the conflicts have intensified due to a number of reasons, including access to the region's abundant fishing resources as well as the potential of significant oil and gas deposits that could be more easily located and exploited using advanced technology.

The United States is not a party to any of the disputes, but the Obama Administration's "rebalance" towards the Asia-Pacific has increased America's profile in the region at a time when many of the region's disputants seek to hedge against China's increasing influence. The U.S. has a key interest in preserving the South China Sea as a global commons, as U.S. trade and investment in the region is significant, and the region's economic vitality is a key component of global economic well-being. U.S.-China relations have also come to further complicate the disputes, with the U.S. encouraging China to be a responsible international player, as the two countries' economic relationship becomes more intertwined.

While the claimants hold on to their positions and pursue different options to maximize their interests, Malaysia appears to pursue a non-confrontational approach in the sovereignty dispute, which differs markedly compared to Vietnam and the Philippines. Malaysia seeks a pragmatic relationship with China, emphasizing the two countries' rapidly strengthening economic ties above all other issues. In many ways, Malaysia's approach to China resembles its dealings with the United States, a more

longstanding economic and trade partner to which Malaysia owes much credit for its economic prosperity over four decades. Although the economic relationship remains robust, Malaysia is also strengthening its military ties with the U.S. – though it has not increased significantly its own defense spending, an indicator of its sanguine view of China as a direct military threat.

Can Malaysia achieve its goals of continued economic prosperity and political sovereignty by taking pragmatic approaches to both the U.S. and China, thus balancing between the two powers? What is the prospect for a peaceful settlement of the dispute between Malaysia and China? Will this pragmatism endure under new leadership in China, potentially new leadership in Malaysia, and eventually new leadership in the U.S.?

It appears that 1) the firm but conflicting views of Malaysia and China on the sovereignty of certain parts of the Spratly Islands is unlikely to be resolved definitively in the near future; 2) both countries will seek to downplay this dispute in the pursuit of stronger economic ties and 3) Malaysia will continue to foster close economic and military ties with the U.S., both to safeguard its economic prosperity by maintaining a diversified set of trade partners, and to counter potential Chinese aggressiveness in the South China Sea. In the meantime Malaysia will continue to advocate an expanded role for ASEAN in seeking resolution of the disputes, in line with its consistent policy of seeking to strengthen ASEAN.

Background

The recent increase in tension between China and several of its neighbors regarding sovereignty of large parts of the South China Sea has not extended to Malaysia, even though it has long claimed parts of the Spratly Islands that China also

claims. Malaysia's reticence may at first seem unexpected, since it firmly solidified a formal claim in a 2009 submission to the UN Commission on the Limits of the Continental Shelf (in accordance with the UN Convention on the Law of the Sea - UNCLOS).¹ Moreover, at the time China responded with a strong, formal diplomatic objection that even included a copy of its so-called "nine dash" map, which illustrated its claim to almost the entire South China Sea.² However, since 2009 Malaysia has focused on strengthening substantially its economic relationship with China, building on bilateral ties that are among the closest between China and any of the states of Southeast Asia. Malaysia was the first ASEAN member to establish diplomatic relations with the People's Republic of China in 1974; it promoted China's now-strong ties with ASEAN; and both current Malaysian Prime Minister Najib Tun Razak and former Prime Minister Abdullah Badawi made their first major foreign trips as prime ministers to China.³ Najib's 2009 visit was largely positive; despite occurring just one month after the tit-for-tat UNCLOS claims, Malaysia hitched its economy more closely to China in order to weather the global recession.⁴ Najib confirmed Malaysia's pragmatism in mid-2011, asserting that while he was "fully committed to the common ASEAN position in terms of our engagement with China on the South China Sea, I am equally determined to ensure our bilateral relationship remains unaffected and, in fact, continues to go from strength to strength."⁵

Malaysia's pragmatic China policy mirrors its relationship over several decades with the United States. For four decades Malaysia has promoted strong trade and investment ties with the U.S., even while objecting frequently and vociferously to many aspects of U.S. foreign policy. Under Najib, however, a more definitive warming has

occurred, with his government pursuing stronger political and military ties with the U.S. – in so doing, taking advantage of the Obama administration’s increasing focus on Asia. The U.S. provides increasingly significant military assistance and training to Malaysia, even as Malaysia’s military budget has remained fairly stable (an indication of Malaysia’s lack of military concern with regard to China). Malaysia’s 2010 decision to participate in the International Security Assistance Force (ISAF) mission in Afghanistan was a potent symbol of strengthened U.S.-Malaysia ties, as was its agreement to join negotiations for the Trans Pacific Partnership (TPP) despite having earlier failed to negotiate a bilateral free trade agreement with the U.S.⁶

Much as it seeks to balance itself between the U.S. and China, Malaysia has also worked to balance regional political groupings between the two powers. Malaysia is a consistently strong proponent of the Association of Southeast Asian Nations (ASEAN), including ASEAN’s efforts to secure a regional solution to the South China Sea territorial dispute, even though this runs counter to China’s insistence that such disputes be resolved bilaterally. Malaysia was one of several ASEAN members that insisted that the dispute be mentioned in the 2012 ASEAN Foreign Minister’s communiqué – which notably resulted in no communiqué at all.⁷ Malaysia has also promoted and welcomed the stronger U.S. role in the region under President Obama, who in turn has vigorously promoted U.S. participation in ASEAN and the East Asia Summit.

Malaysia can be expected to continue to seek to balance itself between the U.S. and China. It is highly unlikely to seek to settle its South China Sea dispute with China through bilateral military means, and will continue to push for a multilateral solution through ASEAN – even as it maintains strong military ties to the U.S., and pursues

stronger economic and political ties with the U.S. as well. For its part China has not shown any inclination to stoke its territorial dispute with Malaysia, which will help the Najib government stand firm in its policy to strengthen relations with China without the need to assert its South China Sea claim. In addition to the new governing authorities in China, Malaysia too will be holding parliamentary elections in the spring of 2013, and PM Najib can be expected to continue to seek a middle course between the U.S. and China that encourages economic prosperity and political security, and thus strengthens his ruling coalition's chances for reelection.

Conflicting Claims of Malaysia and China

On May 6, 2009, Malaysia submitted to the UN Commission on the Limits of the Continental Shelf a formal claim on parts of the Spratly Islands in the South China Sea, off the northern coast of Eastern Malaysia (which consists of the states of Sarawak and Sabah on the island of Borneo). Malaysia submitted its claim together with Vietnam, just prior to the deadline for all signatories to the UN Convention on the Law of the Sea. The two countries' joint claim only covered part of their respective portions of the Continental Shelf in the South China Sea – in Malaysia's case offshore of Borneo. The joint submission did not cover any claims arising from the coast of peninsular Malaysia, which straddles both the South China Sea and the Straits of Malacca, nor did it cover that portion of Vietnam's maritime boundary with China that extends from the Vietnam-China land boundary. Malaysia's submission under UNCLOS followed its 1996 statement upon Malaysia's ratification of UNCLOS.⁸

China wasted no time in voicing its strong objections to the Malaysian-Vietnamese submission. On May 7, 2009, China submitted a diplomatic note to UN Secretary General Ban Ki-Moon that stated that "China has indisputable sovereignty

over the islands in the South China Sea, and enjoys sovereign rights and jurisdiction over the relevant waters . . . “.⁹ The note added that the “continental shelf beyond 200 nautical miles as contained in the Joint Submission by Malaysia and . . . Vietnam has seriously infringed China’s sovereignty . . .”.¹⁰ China’s note included a map of the South China Sea that indicated its claim to sovereignty of all the islands in the Sea as well as adjacent waters.¹¹

Carlyle Thayer notes that, notwithstanding China’s claim of “indisputable sovereignty” of nearly all of the South China Sea, it has never provided a clear explanation for the basis of such a claim. China also has remained vague about whether its UNCLOS submission is a claim of sovereignty over all the rocks/islets within the nine-dash marks, or is a claim of the South China Sea as territorial waters. Chinese occupation of nine rocks in the Spratly Islands does not imply unambiguously a Chinese 200-mile exclusive economic zone, since international law only recognizes EEZs based on islands that can “sustain human habitation and have an economic function.” On the other hand, China’s nine-dash claim cuts into the EEZs of Vietnam, the Philippines, and Malaysia – EEZs that appear much less ambiguous, since they extend from those countries’ coasts outward 200 miles.¹²

In its May 20, 2009 diplomatic note to the UN in response to the Chinese note, Malaysia reiterated that the May 6 joint submission by Malaysia and Vietnam establishing the limits of the South China Sea continental shelf for the two countries “constitute[d] legitimate undertakings in implementation of the obligations of States Parties” to UNCLOS. The May 20 note further stated that the submission was “without prejudice” to the position of states with a land or maritime dispute, and that Malaysia

had informed China of its position prior to making the joint submission to the UN Commission on the Limits of the Continental Shelf.¹³ Indeed, Malaysia appears to have a stronger claim to the area that it disputes with China. Malaysia exerts some form of occupation of five of the islands in the disputed area, while China does not occupy any of the islands in this zone. Moreover, like the Philippines and Vietnam, Malaysia bases its EEZ claim in the South China Sea on a large contiguous land surface – the eastern Malaysian states of Sabah and Sarawak. The islands it occupies within the South China Sea lay within Malaysia's claimed EEZ as fixed from Sabah. Malaysia's apparently stronger claim (at least as compared to China) follows the UNCLOS principle that economic zones be based on land and insular territories – and Malaysian sovereignty over a known land mass like Sabah outweighs any Chinese EEZ assertion in the South China Sea based on Chinese claims of occupation of land features that may or may not qualify as “insular” as defined by UNCLOS.¹⁴

Dispute Causes Little Effect on Malaysia-China Relations

Malaysia's ties with China have evolved considerably since it first established diplomatic relations in 1974 (the first member of ASEAN to do so). From 1974 up till the end of the Cold War, Malaysia's approach to China was influenced significantly by China's support for the outlawed Malayan Communist Party.¹⁵ Malay elites in Malaysia saw China's support of a party whose membership was overwhelmingly ethnic Chinese as a direct threat to Malaysia (which after all had only been independent since 1957, and which had separated acrimoniously from ethnic-Chinese-dominated Singapore in 1965). Kuik Cheng-Chwee posits that Malay mistrust of China gradually began to abate after Prime Minister Mahathir Mohamed (1981-2003) first visited China in 1985. Much like his pragmatic economic approach to the U.S. (another powerful country with foreign

policy to which he objected), Mahathir's visit to China focused on economic engagement, during a time of global economic recession when Malaysia sought to decrease its economic vulnerability by seeking new trading partners – none of which held as much potential as China.¹⁶

By 1989 the Cold War had ended. An even more important impetus for improved bilateral ties was the dissolution of the Malayan Communist party that same year. Also in 1989 China implemented a new law that delinked Chinese citizenship from the Chinese diaspora, which led Malays to view ethnic Chinese Malaysians with less suspicion of divided loyalties. The following decade saw the steady development of stronger economic ties between Malaysia and China, with bilateral trade climbing from U.S.\$307 million in 1982 to U.S.\$1.4 billion in 1992 and to U.S.\$14 billion by 2002 – by which point Malaysia had become China's largest trading partner among the ASEAN states.¹⁷

As Malaysia's bilateral engagement with China ramped up in the 1990s, it also played a key role in promoting Chinese engagement with ASEAN. Malaysia first helped initiate ASEAN dialogue with China by inviting it to the 24th ASEAN Ministerial Meeting, hosted by Malaysia in 1991. This was followed by the creation of the ASEAN Regional Forum in 1994, the ASEAN-China Senior Officials Consultation in 1995, and the ASEAN Plus Three in 1997.¹⁸

Following the 22-year tenure of Prime Minister Mahathir, who evolved from a critic of China to a strong supporter of improved bilateral relations, the subsequent governments of Prime Ministers Abdullah Badawi (2003-09) and Najib Razak (since 2009) pursued consistently positive development of Malaysia-China ties. Abdullah had

been foreign minister in 1991 when he extended the invitation to China to the 24th ASEAN ministerial. Only half a year after becoming prime minister, Abdullah led a high-profile mission to China that included a third of his cabinet and over 500 businessmen. During the May 2004 visit the two countries signed a joint communiqué in which they pledged “to further strengthen consultations and coordination at the UN, ARF (ASEAN Regional Forum), APEC, ASEM (the Asia-Europe Meeting), WTO and other multilateral fora.”¹⁹ The two countries’ communiqué further stated:

Both sides also agreed to maintain peace and stability in the South China Sea and to promote the settlement of disputes through friendly bilateral consultations and negotiations in accordance with universally recognized principles of international law, including the 1982 United Nations Convention on the Law of the Sea. The two sides expressed their readiness to study the follow-up actions on the implementation of the Declaration on the Conduct of Parties in the South China Sea.²⁰

During the trip Abdullah formally proposed the first East Asia Summit, and specifically called for both countries to cooperate “in setting the agenda for a new era of regional cooperation.”²¹ He subsequently hosted the first East Asia Summit in 2005, in which China’s relations with its neighbors was a key theme. Under Abdullah the two countries began a “strategic cooperation” partnership that was manifested in a variety of ways, including trade (with Malaysian government-linked corporations expanding significantly into China) and investment (such as China’s financing of a new bridge to Penang, one of the largest infrastructure projects ever undertaken in Malaysia).²²

China also was the destination of Najib’s first visit as prime minister to a non-ASEAN state, just two months after he took office. Najib earlier had played a key role in furthering bilateral ties while serving as Deputy PM under Abdullah; in an April 2004 speech just before Abdullah’s first trip to China, Najib publicly stated that China and Malaysia had “forged a kind of strategic partnership” and “stand together on many

international issues which have helped to form consensus among developing and even developed states.” He also called for the two countries “to better understand each other so as to face a global environment that has come to be dominated by a few over the many.”²³ Earlier in Najib’s career he was the first Malaysian defense minister to receive a People’s Liberation Army delegation to Malaysia in May 1993, and while defense minister again in 2005 the two countries signed a memorandum of understanding on defense cooperation, followed in May 2006 with the countries’ first defense consultations.²⁴

Najib became Prime Minister in April 2009. Just one month later Malaysia made its UNCLOS submission, exerting its claim to South China Sea territory also claimed by China. Nevertheless, when Najib visited China in June 2009, the two countries signed a “Joint Action Plan on Strategic Cooperation” which announced 13 key areas for future cooperation.²⁵ When he spoke to Malaysia’s top diplomats upon his return, Najib said Malaysia’s “relationship with China is fundamental to our national interests” and the two countries needed to “deepen and broaden” their relationship.²⁶ Indeed, Najib praised China for its strong economic growth of 6.1% in the first quarter of 2009 even as much of the rest of the world (including Malaysia) was in recession. He made no mention to the diplomats of the South China Sea dispute, emphasizing instead the primacy of the bilateral economic relationship. For example, he called for an expansion of Malaysia’s trading base with China beyond the traditional sectors of electronics, palm oil, and chemicals, to also include oil and gas, financial services, information technology, and high-value agricultural products.²⁷

Much as Mahathir had looked to China in the 1990s to help pull Malaysia out of recession by increasing bilateral economic ties, Najib viewed China as key to Malaysia's continued prosperity. He took office in 2009 during the first downturn in Malaysia's economy in a decade, when China was one of the few major economies to continue to register strong economic growth. During his 2009 trip to China Najib reportedly stated that China would be in the "forefront" to lead the world out of recession, and predicted that the eventual economic recovery would lead to even greater integration between the East Asian and Southeast Asian economies.²⁸ Indeed, despite the economic downturn, there was no halt to the steady increase in two-way trade. Malaysia-China total trade volume increased from RM (Malaysian ringgit) 130 billion in 2008 to RM 138 billion in 2009, RM 147 billion in 2010 (when China became Malaysia's biggest trading partner), RM 167 billion in 2011, and RM 181 billion in 2012.²⁹

Increased bilateral cooperation in the financial sector has furthered trade and investment between China and Malaysia. Bank Negara Malaysia (BNM), the country's central bank, signed a memorandum of understanding in November 2009 to increase cooperation on banking supervision, which was followed by the opening of a branch of China's largest bank, the Industrial and Commercial Bank of China (ICBC), in Malaysia. In April 2011 BNM opened an office in Beijing, and in February 2012 renewed its agreement with the People's Bank of China for a bilateral currency swap arrangement, which encouraged the settling of bilateral trade accounts in the two countries' currencies and thus promoted bilateral trade.³⁰

Malaysia has continued to promote closer economic integration with China. It supported the formal launch in November 2012 of negotiations to create a Regional

Comprehensive Economic Partnership (RCEP) among the ASEAN members and the six countries with which ASEAN has existing free trade agreements: China, India, Japan, Korea, Australia and New Zealand.³¹ Although sometimes characterized as a “China-led” rival to the “U.S.-led” Trans Pacific Partnership (TPP), Malaysia is one of several countries negotiating to join both groupings, including ASEAN members Brunei, Singapore, and Vietnam. Australian PM Julia Gillard called Australia’s participation in both negotiations “two paths to the same destination” – a statement which could aptly sum up Malaysia’s hedging approach to economic diversity, as well as its overall approach to balancing between great powers like the U.S. and China.³²

Malaysia’s lack of serious concern regarding Chinese military intentions in the South China Sea is evidenced by Malaysia’s military budget. Compared to the 2008 budget, military expenditures fell in both 2009 and even further in 2010 (that year the country’s military spending as a percentage of its GDP was the lowest in a decade). Even as Malaysia slightly increased military spending in 2011, the level remained below that of 2008.³³

Kuik Cheng-Chwee has analyzed Malaysian policy towards China in terms of three pillars – economic pragmatism, binding engagement, and limited “bandwagoning”. The first pillar regards Malaysia’s firm commitment to increase its trade and investment ties with the world’s most dynamic economy in order to hedge its other strong economic ties, with the U.S. in particular. The second pillar is evidenced by Malaysia’s leading role in promoting China’s ties to ASEAN, as well as the Malaysia-led creation of the East Asia Summit – a grouping promoted by Mahathir and endorsed strongly by China (though the U.S. has now joined the East Asia Summit, changing the nature of a group

that had originally espoused its Asia-only membership). Malaysia saw this multilateral engagement as key to binding China to the region. Kuik claims Malaysia “bandwagoned” to China by aligning with it rather than balancing against it – though such alignment was limited, as Malaysia strived not to be dominated by China. Common Chinese and Malaysian positions in international forums in the 1990s reflected this limited “bandwagoning”, with both countries often calling for a multi-polar international order (and thus decreased U.S influence) and downplaying human rights.³⁴

Even as Malaysia under Mahathir espoused these foundational approaches to its relationship with China, it implemented a seemingly contradictory policy to impede Chinese dominance. To do so, Malaysia maintained and strengthened military ties with the U.S. and other Western powers, and supported increased participation of other large powers in regional architecture. Malaysia’s primary aim was to cultivate a regional balance of power and thus inhibit dominance by any single power. Thus Malaysia helped further regional balance between the U.S. and China, much the same way it cultivated its own balance between the two powers.³⁵

Malaysia-U.S. Ties: Maintaining Economic, Strengthening Military Relationship

Malaysia’s approach to its relationship with the United States could be described in similar language to that used by Kuik to analyze Malaysia-China relations. Economic pragmatism is arguably the most salient feature of U.S.-Malaysia relations over a period stretching back more than 40 years. Moreover, as with China, Malaysia has supported an increased, and more senior, role for the U.S. in regional architecture -- in ASEAN and, more recently, the East Asia Summit, helping to bind the U.S. to the future of Southeast Asia. Finally, Malaysia’s military ties to the U.S., especially since 2001 and even more since 2009, could be viewed as a limited type of “bandwagoning” in which

Malaysia informally aligned with the U.S. in more areas, rather than trying to balance against the U.S. (the latter tactic had been an earlier feature of Malaysia's approach to the U.S., especially under the Mahathir government).

Military Ties

Malaysia and the U.S. have enjoyed close military cooperation for several decades, even during periods of acrimonious political relations. The Bilateral Training and Consultations (BITACG) arrangement, signed in 1984, covered joint training exercises (including U.S. access to Malaysia's jungle warfare school in Pulada, Johor), as well as logistical support and intelligence sharing.³⁶ After the BITACG was signed, the U.S. expanded its International Military Education and Training (IMET) and also increased its Foreign Military Sales credits to Malaysia. To date the U.S. has trained over 3200 Malaysian military personnel, and Malaysia regularly sends officers to attend both the U.S. Army War College and the U.S. Army Staff College.³⁷ U.S. troops continue to train regularly at Malaysia's Jungle Warfare Training Center.

The Cooperation Afloat Readiness and Training (CARAT) exercises began in 1996, and since then have provided an annual opportunity for U.S. armed forces (primarily the Navy and Marine Corps) to help increase the maritime security capabilities of their Malaysian counterparts; the most recent exercises, in June 2012, involved over a thousand U.S. military participants.³⁸ In 2010 Prime Minister Najib noted the value to Malaysia of CARAT and similar exercises, and called for further bilateral collaboration in the maritime domain.³⁹

Military ties strengthened further after the 9/11/2001 terrorist attacks in the U.S. (even as Malaysia was simultaneously strengthening its economic ties with China). The two countries signed a Memorandum of Understanding on Counter-Terrorism in 2003

and an Acquisition and Cross-Servicing Agreement in 2005, both of which encouraged increased bilateral military cooperation (which had already begun to increase after the 9/11 terrorist attacks in the U.S.).⁴⁰ Malaysia also became an early adherent to two U.S. anti-terrorism programs – the Container Security Initiative (implemented in Port Klang in 2003 and Tanjung Pelapas in 2004) and the Proliferation Security Initiative (implemented by Malaysia in 2004), and in 2008 Malaysia also joined the U.S.’s Megaports Initiative.⁴¹

As a member of the Organization of Islamic Cooperation (which it headed from 2003 to 2008) Malaysia had been a particularly vocal opponent of the U.S.-led invasions of Afghanistan and Iraq in the wake of 9/11. Malaysia’s 2010 decision to undertake an active humanitarian role in Afghanistan was thus a telling signal of its desire to augment its military ties with the U.S. Although Malaysian troops do not perform a combat mission in Afghanistan, the deployment of 40 Malaysian personnel to provide direct health services eventually developed into a more robust mission that provides capacity building and institutional development for the Afghan Ministry of Health.⁴²

Political Engagement

Since becoming prime minister in 2009, Najib has furthered a trend towards warmer political relations with the U.S. Former Prime Minister Mahathir was invariably antagonistic towards the U.S., which he viewed as a neo-imperialist power. He was particularly critical of the U.S. decision to invade Iraq in 2003 without a UN mandate to do so. Mahathir’s successor Abdullah Badawi noticeably toned down anti-U.S. rhetoric, though the Malaysian government’s firm opposition to both the U.S. presence in Iraq and the strong U.S. support for Israel remained steadfast. However, Najib’s tenure as prime minister has been characterized from the start by even more significant warming

in the bilateral relationship. Shortly after taking office in April 2009, Najib told a meeting of his country's top diplomatic representatives that he welcomed "the positive foreign policy outlook under President Obama's administration."⁴³ He closed his June 2009 address (which focused specifically on only two countries – the U.S. and China) by declaring "[our] relationship with the United States remains central and strategic at many levels and across many issues" and "we are moving to bring this relationship to a higher level."⁴⁴

Najib's tenure has largely coincided with that of President Obama, and the two leaders have forged a positive relationship that is without precedent in the history of U.S.-Malaysia relations. Najib's June 2009 speech indicated how the Obama administration was perceived in Malaysia as a clear break from the George W. Bush administration and its focus on policies to which Malaysia objected, in particular the Iraq war. Najib attended the Nuclear Security Summit in Washington in April 2010, where he met with Obama and made public remarks noting the "positive role [of the U.S.] in building the capacity of Southeast Asia's security forces in the struggle against terrorism. Indeed, cooperation between Malaysia and the United States in this regard has never been stronger. It is my hope that this cooperation will be sustained long into the future."⁴⁵

The Obama administration's "rebalance" towards the Asia-Pacific region coincided with Najib's emphasis on improving Malaysia's relations with its key international partners, including the U.S.⁴⁶ In his April 2010 speech in Washington, Najib said "Malaysia, in particular, welcomes the Obama Administration's endorsement of multilateralism as the preferred route to problem-solving. We also welcome its

endorsement of ASEAN's centrality in regional processes."⁴⁷ The stronger U.S. focus on ASEAN under Obama dovetailed with Malaysia's longstanding push to increase the effectiveness of that multinational grouping and its ties to both the U.S. and China. Secretary of State Hillary Clinton signed ASEAN's Treaty of Amity and Cooperation in 2009. The East Asia Summit (EAS), a Mahathir initiative that held its first meeting in Kuala Lumpur in 2005, extended an invitation during the 2010 meeting (attended by Secretary Clinton) for the U.S. to join. President Obama then attended the 2011 EAS in Bali as the U.S. formally joined the group, and also attended the 2012 EAS in Cambodia, just days after his reelection. In both Bali and Cambodia Obama also represented the U.S. at the ASEAN-U.S. Leaders' Meeting, which in the future will be structured as a formal summit to institutionalize U.S. presidential attendance.⁴⁸ Although Obama has yet to visit Malaysia (no sitting U.S. president has done so since Lyndon Johnson), both Secretary Clinton and Secretary of Defense Robert Gates made noteworthy back-to-back visits in late 2010.

A White House background briefing by a senior U.S. official following the 2011 EAS emphasized the attention both Obama and Najib had paid to the South China Sea sovereignty issue. The official noted that Najib's position largely mirrored that of Obama, saying that Najib

went through principles that are very similar to what the U.S. has also articulated with respect to the need to resolve the issue peacefully through dialogue, the need to make progress on a code of conduct, the principle of respect for international law, the applicability of UNCLOS, the need for a multilateral process to resolve these territorial disputes among parties, and adherence by all to the guiding principles.⁴⁹

Economic engagement

Although improvement in the U.S.-Malaysia political relationship is a relatively recent phenomenon, bilateral economic ties have been consistently strong for four decades. U.S. investment was central to the “Malaysian miracle” which lifted the country to one of the region’s highest standards of living, starting in the early 1970s.⁵⁰ Indeed, Malaysia never wavered in its desire for strong economic ties to the U.S., even during some of the lowest points in the two countries’ bilateral relationship during the Mahathir era. The U.S. was Malaysia’s single largest trading partner from 1997 to 2007, before being supplanted by Singapore, Japan, and eventually China.⁵¹

In 2006 Malaysia and the U.S. agreed to negotiate a free trade agreement, which held the promise of decoupling the Malaysian government’s firm grip on the country’s economic development. The negotiations ultimately proved inconclusive, as Malaysia was unable to show flexibility in several key areas, including government procurement and financial services. Expiration of the U.S. “fast track” legislative authority also inhibited successful negotiations.⁵² Notably, however, under current PM Najib, Malaysia decided to join the negotiations for a multilateral Trans Pacific Partnership (TPP), which has become the U.S.’s key trade initiative in the Asia Pacific (though the U.S. was not one of the original negotiating parties). Malaysia joined these talks even as the Malaysian economy was becoming more tied to China and relatively less connected to the U.S. Najib’s decision to join the TPP negotiations can be interpreted as the economic equivalent to its increasingly close military and political ties with the U.S. – an effort to balance the growing influence of China in Malaysia with strengthened ties to the United States.

Malaysia's traditionally strong preference for multilateralism, in particular as exercised by ASEAN, is the basis for its consistent position that the South China Sea sovereignty disputes be solved through ASEAN engagement with China. Malaysia's policy has been firm even given China's adamant refusal to seek resolution of its various disputes through any multilateral process (Malaysia also engages with China directly regarding the two countries' own dispute, and their May 2004 communiqué referred to bilateral consultations on the dispute). The Malaysian Ministry of Foreign Affairs states current Malaysian policy that "ASEAN will continue to be the cornerstone of our foreign policy and the predominant forum for maintaining regional peace and stability through dialogue and cooperation."⁵³

Despite the Chinese rejection of a multilateral solution to the disputes, a current Malaysian Foreign Ministry statement of policy towards China reveals Malaysia's firm view of China as a friend of ASEAN: "As a strong proponent of regional cooperation, China has always been a staunch friend of ASEAN. It was China's unflinching support that helped the region overcome the financial and economic crisis of 1997. China is expected to play a significant and positive role in strengthening ties between ASEAN and North East Asia."⁵⁴ Even though it is a party to one of China's sovereignty disputes in the South China Sea, Malaysia's encouragement of ASEAN to oversee a multilateral solution to the disputes could be seen as placing itself in the position of promoting conflict resolution among its fellow ASEAN members and China.

The 2012 ASEAN Ministerial Meeting (AMM) in Cambodia in July, occurring during a year of escalation of China's disputes with both the Philippines and Vietnam, put Malaysia in a difficult position. The meeting brought to a head the long-pending

implementation of the Declaration on The Conduct of Parties (DOC) in the South China Sea, which had been negotiated between ASEAN and China in 2002 as a non-binding agreement in which the signatories pledged not to use force to settle the region's various sovereignty disputes. The DOC substituted for a more binding Code of Conduct (COC) to which China would not agree. However, even implementation of the non-binding DOC by an ASEAN-China Joint Working Group never occurred, as China pushed for discussions on sovereignty issues at the bilateral level only.⁵⁵

In the deliberations to draft the 2012 AMM communiqué, Malaysian Foreign Minister Anifah Aman called for “continued close consultation and coordination through existing mechanisms [to] fully implement the DOC”, while at the same time calling for ASEAN and China to agree on key elements of the COC before attempting to draft a full COC.⁵⁶ Anifah Aman underscored that the COC should create a rules-based framework, but should leave the dispute resolution to existing mechanisms under UNCLOS. With regard to the draft AMM communiqué, he called for ASEAN to speak with a single voice: “[w]e must refer to the situation in the South China Sea, particularly any acts that contravene the international law on EEZ and continental shelves. It is totally unacceptable that we can't have it in the joint communiqué.”⁵⁷ In the end no communiqué was issued – the only time since the AMM was first held in 1967 that no such document was issued at the meeting's conclusion.⁵⁸ Widespread speculation pointed to Cambodia acceding to Chinese pressure to resist any mention of the South China Sea disputes in the communiqué; the record indicates that Cambodian intransigence played the deciding role in canceling the communiqué.⁵⁹ The Cambodian foreign minister reportedly blamed “two countries” for the lack of the communiqué,

apparently referring to Vietnam and the Philippines, the two ASEAN countries with the most acute sovereignty disputes with China.⁶⁰

Despite the lack of a communiqué, the ASEAN foreign ministers ultimately agreed on an Indonesia-brokered text, “ASEAN’s Six-Point Principles on the South China Sea”, in which they reiterated and reaffirmed the commitment of ASEAN Member States to:

1. the full implementation of the Declaration on the Conduct of Parties in the South China Sea (2002);
2. the Guidelines for the Implementation of the Declaration on the Conduct of Parties in the South China Sea (2011);
3. the early conclusion of a Regional Code of Conduct in the South China Sea;
4. the full respect of the universally recognized principles of International Law, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS);
5. the continued exercise of self-restraint and non-use of force by all parties; and
6. the peaceful resolution of disputes, in accordance with universally recognized principles of International Law, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS).⁶¹

The Foreign Ministers also pledged “to intensify ASEAN consultations” to advance the six principles.⁶² Although essentially a face-saving gesture after the same issue held up agreement on the AMM communiqué, the six points do not mention the proximate cause for the communiqué’s failure: China’s standoff with the Philippines over the Scarborough Shoal. This precedent of ASEAN self-censorship may indicate the limitations of ASEAN ever being able to collectively negotiate an end to the sovereignty disputes.⁶³

A few weeks after the AMM Anifah Aman had an opportunity to discuss the issue further with his Chinese counterpart, Foreign Minister Yang Jiechi, whose August 2012 visits to Malaysia and Indonesia were viewed by some analysts as a Chinese attempt to mend fences with ASEAN.⁶⁴ The two foreign ministers did not hold a joint press conference; however, Anifah Aman publicly expressed confidence that the South China Sea disputes could be resolved peacefully, adding that the overlapping claims of ASEAN member states should be discussed first before the organization discusses its disputes collectively with China. This suggests Malaysian acquiescence to a “go-slow” approach to dispute resolution, which would be in line with its general preference to deemphasize the dispute as a salient factor in the bilateral relationship.⁶⁵

After the prominence that the lack of a communiqué brought to the AMM, ASEAN members appeared determined not to make the same mistake at the November 2012 ASEAN Summit and related bilateral leaders’ meetings. In the end, the ASEAN-China Leaders Meeting issued a statement that highlighted the tenth anniversary of the DOC, and largely mirrored the six points issued by the ASEAN foreign ministers in July (though again without referencing specific sovereignty disputes).⁶⁶ The ASEAN-U.S. Leaders Meeting also issued a statement that

recognized the importance of the 2002 ASEAN-China Declaration on the Conduct (DOC) of Parties in the South China Sea and welcomed its implementation. We looked forward to the early conclusion of a Regional Code of Conduct in the South China Sea (COC). We expressed support for ASEAN Foreign Ministers’ Statement on ASEAN’s “Six-Point Principles on the South China Sea”, adopted on 20 July 2012, and its effective implementation.”⁶⁷

Malaysia to Continue to Pursue Pragmatic Policy to Balance Between
the U.S. and China

In his June 2009 speech to Malaysian diplomats, Najib stated that “it would not be wise for us to lessen our engagement with our closest traditional partners: the United States, Europe, Japan, South Korea, Australia and ASEAN”, even in light of Malaysia’s “special ties to China.”⁶⁸ In the years since, the Najib government has adhered closely to this principle. Malaysia can be expected to continue its “hedging” approach in which it balances between the U.S. and China -- maximizing the economic and diplomatic benefits of ties with China, while maintaining strong economic and military links with the U.S.

Malaysia is highly unlikely to seek to settle its South China Sea dispute with China through bilateral military means. Its military expenditures since it submitted its UNCLOS claim in 2009 indicate Malaysia is not militarizing itself for any perceived threat (even though it could afford to do so given its strong economic recovery from the 2008 recession). Instead, Malaysia will continue to push for a multilateral solution through ASEAN. This is likely to be the case even if China continues to pursue a more aggressive posture with Vietnam and the Philippines. For its part China has not shown any inclination to stoke its territorial dispute with Malaysia. In addition to the new governing authorities in China, Malaysia too will be holding parliamentary elections in the spring of 2013, and PM Najib can be expected to continue to seek a middle course between the U.S. and China that encourages economic prosperity and thus strengthens his ruling coalition’s chances for reelection.

Implications for the United States

A number of policy implications can be drawn from this analysis. First, Malaysia’s wariness about China as a security threat will likely convince it to maintain and even deepen its military relationship with the U.S. Malaysia could thus become a cornerstone

for U.S. security policy in Southeast Asia as the U.S. rebalance deepens. Second, as a disputant that has deliberately chosen to downplay its conflict with China in the pursuit of economic prosperity, Malaysia could help broker any mediation effort between China and other disputants (Vietnam, the Philippines), especially under the guise of ASEAN. Malaysian pragmatism is all the more evident given its simultaneous downplaying of its sovereignty disputes with the Philippines and Vietnam – seen most clearly through its 2009 submission to UNCLOS, done jointly with Vietnam (Malaysia had sought unsuccessfully for the Philippines to join that submission as well). Malaysia's self-styled leadership in ASEAN, Southeast Asia, and the Non-Aligned Movement would only add to its willingness to help deescalate confrontation, and perhaps eventually help mediate solutions to the various disputes. U.S. interest in a stable, prosperous Southeast Asia, including through a strengthened ASEAN, would be advanced, as Malaysia seeks to convince its ASEAN partners to use the multilateral organization to seek resolution with China.

Third, Malaysia can be expected to promote economic prosperity through diversity of trading partners, and thus will continue to participate in negotiations for the Trans Pacific Partnership. Given Malaysia's position as a regional economic heavyweight, an eventual TPP would thus be anchored firmly in Southeast Asia, further strengthening the economic leg of the U.S. regional rebalance. Finally, Malaysia will continue to pursue closer economic ties and even political ties with China, but with a cautious safeguarding of its sovereignty that will keep in check Chinese influence in Malaysia. In this regard, Malaysia can be expected to leave unresolved indefinitely its sovereignty dispute with China – unless China's disputes with Vietnam and/or the

Philippines heat up again, at which point Malaysia likely would push an ASEAN solution even more vigorously.

Conclusion

Malaysia appears to take a different approach from its neighbors in the South China Sea disputes in order to pursue what it perceives as more important interests. This analysis has shown that 1) Malaysia prefers to base its relationship with China on economic prosperity above other interests, including the two countries' sovereignty dispute; 2) Malaysia will seek continued strong military ties with the U.S., in part to balance against China given the latter's ever increasing presence in Southeast Asia, and finally 3), Malaysia will continue to promote strong bilateral relationships with both the U.S. and China, promote both those countries' ties to ASEAN, and continue to promote resolution of the South China Sea disputes on a multilateral basis through ASEAN.

Endnotes

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⁴ See Lim Tin Seng, "Renewing 35 Years of Malaysia-China Relations: Najib's Visit to China," *East Asian Institute Background Brief* (Singapore: June 23, 2009).

⁵ Najib Tun Razak, "Keynote Address," *The 10th IISS Asian Security Summit/The Shangri-La Dialogue* (Singapore: June 3, 2011), paragraph 42.

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⁷ Carlyle A. Thayer, "ASEAN's Code of Conduct in the South China Sea: A Litmus Test for Community-Building?," *The Asia-Pacific Journal*, Vol. 10, Issue 34, No. 4 (August 20, 2012), http://www.japanfocus.org/-Carlyle_A_-Thayer/3813.

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⁹ The Permanent Mission, *Note Verbale CML/17/2009*.

¹⁰ Ibid.

¹¹ Ibid.

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¹³ The Permanent Mission of Malaysia to the United Nations, *Diplomatic Note HA 24/09* (New York: May 20, 2009).

¹⁴ According to UNCLOS, islands can form the basis for establishing a state's territorial sea, contiguous zone, exclusive economic zone and the continental shelf; however, "rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf." *United Nations Convention on the Law of the Sea*, Article 121.

¹⁵ Kuik, "Malaysia's China Policy," 10.

¹⁶ Ibid.

¹⁷ Ibid., 11.

¹⁸ Ibid., 12-13.

¹⁹ *Joint Communique Between The People's Republic of China and Malaysia* (Beijing: May 29, 2004), as published in People's Daily Online (May 30, 2004), accessed via http://english.peopledaily.com.cn/200405/30/eng20040530_144795.html.

²⁰ Ibid.

²¹ Kuik, "Malaysia's China Policy," 21-22.

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²³ Ibid., 23.

²⁴ Ibid., 24.

²⁵ Ibid., 16.

²⁶ Najib Tun Razak, "Malaysian Foreign Policy: Future Direction for 2009-2015," (Kuala Lumpur: 7th Heads of Mission Conference, June 22, 2009).

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²⁸ Lim, "Renewing 35 Years," 3.

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³⁵ Ibid.

³⁶ Murray Hiebert, Elina Noor, Gregory Poling, and Tham Siew Yean, "From Strength to Empowerment: The Next Generation of U.S.-Malaysia Relations," *CSIS Southeast Asia Program and ISIS Malaysia* (Washington/Kuala Lumpur: May 2012), 17.

³⁷ Ibid.

³⁸ Ibid., 18; Commander Task Force 73 Public Affairs, "18th U.S.-Malaysia Exercise Set to Start," (Commander Naval Surface Force, U.S. Pacific Fleet: June 13, 2012).

³⁹ Najib Tun Razak, "Keynote Speech," *U.S.-Malaysia Relations: Looking Ahead at Key Pillars of Cooperation Seminar* (Center for Strategic and International Studies, Washington: April 14, 2010). Najib was Minister of Defense from 1990-95 and 2000-08, overseeing Malaysian peacekeeping operations in such places as Bosnia (1993), Somalia (1993) and Lebanon (2006).

⁴⁰ Hiebert, "From Strength to Empowerment," 17.

⁴¹ Sodhy, "Malaysia-US Relations," 28-30. The Container Security Initiative (CSI) monitors major ports to screen U.S.-bound cargo shipments for weapons of mass destruction. The Proliferation Security Initiative (PSI) coordinates global cooperation to interdict weapons of mass destruction and missile related shipments. The Megaports Initiative is aimed at deterring and interdicting the trafficking of nuclear and other radioactive materials.

⁴² Sodhy, "Malaysia-US Relations," 18-19.

⁴³ Najib, "Malaysian Foreign Policy."

⁴⁴ Ibid.

⁴⁵ Najib, "Keynote Speech" at seminar on *U.S.-Malaysia Relations*.

⁴⁶ Hiebert, "From Strength to Empowerment," 19.

⁴⁷ Najib, "Keynote Speech" at seminar on *U.S.-Malaysia Relations*.

⁴⁸ "Joint Statement of the 4th ASEAN-U.S. Leaders' Meeting" (Phnom Penh, Cambodia: November 19, 2012).

⁴⁹ The White House Office of the Press Secretary, "Background Briefing by a Senior Administration Official on the President's Meetings at Asean and East Asia Summit" (Aboard Air Force One En Route Anderson Air Force Base, Guam: Nov. 19, 2011).

⁵⁰ Sodhy, "Malaysia-US Relations," 2.

⁵¹ Lim Tin Seng, "Renewing 35 Years," 8.

⁵² Sodhy, "Malaysia-US Relations," 43.

⁵³ Ministry of Foreign Affairs Malaysia, "Multilateral: Strengthening ASEAN," <http://www.kln.gov.my/web/guest/md-strengthening> (accessed February 18, 2013).

⁵⁴ Ministry of Foreign Affairs Malaysia, "Malaysia's Foreign Policy: Bilateral Relations," <http://www.kln.gov.my/web/guest/bilateral> (accessed February 18, 2013).

⁵⁵ Thayer, "ASEAN's Code of Conduct," 2-3.

⁵⁶ Ibid., 9.

⁵⁷ Ibid.

⁵⁸ Ibid., 5-13. Thayer provides a detailed record of the AMM deliberations in July 2012 based on working drafts of the proposed communiqué and related documents.

⁵⁹ Ibid.

⁶⁰ Ibid.; Ernest Z. Bower, "China Reveals its hand on ASEAN in Phnom Penh," East Asia Forum (July 28, 2012).

⁶¹ "Statement of the ASEAN Foreign Ministers" (Phnom Penh: July 20, 2012).

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⁶³ Donald K. Emmerson, "Beyond the Six Points: How Far Will Indonesia Go?," East Asia Forum (July 29, 2012).

⁶⁴ Thayer, "ASEAN's Code of Conduct," 15.

⁶⁵ Ibid.

⁶⁶ “Chairman's Statement of the 15th ASEAN-China Summit” (Phnom Penh, Cambodia, November 19, 2012). The relevant paragraphs state:

7. We underscored the significant importance of DOC as a historic document which reflects the collective commitment of ASEAN Member States and China to promote peace, stability, mutual trust and confidence in the South China Sea.

8. We reaffirmed our commitment to continue to effectively implement the DOC in full, to enhance maritime security, and to encourage the parties concerned to resolve territorial and jurisdictional disputes by peaceful means, in accordance with the universally recognized international law, including the 1982 UN Convention on the Law of the Sea (UNCLOS).

9. We emphasized the importance of exercising self-restraint by all parties concerned in the conduct of activities which may complicate or escalate disputes and affect peace and stability in the region, and to resolve their differences peacefully.

10. We agreed to use the existing dialogue mechanisms between and among the ASEAN Member States and China at all levels to promote mutual trust and confidence. We agreed to enhance favorable conditions for a peaceful and durable solution of differences and disputes among the countries concerned.

⁶⁷ “Joint Statement of the 4th ASEAN-U.S.”

⁶⁸ Najib, “Malaysian Foreign Policy.”

